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NEWSLETTER
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**OPINION OF THE SUPREME COURT OF HUNGARY CONCERNING CERTAIN
ISSUES RELATING TO PRE-EMPTION RIGHT REGARDING THE OWNERSHIP
INTEREST HELD IN A LIMITED LIABILITY COMPANY**

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The Supreme Court of Hungary issued a Civil Law Opinion on 24 June 2009 on various practical issues concerning pre-emption right in regard of the ownership interest held in a limited liability company (the ownership interest is hereinafter referred to as "**quota**").

Legal Background

Under the Hungarian Civil Code, co-owners have a statutory pre-emption right before third parties in regard of each other's ownership portion. Unless otherwise prescribed by law, the pre-emption right granted to other persons in specific other legislation has priority over the pre-emption right of co-owners.

Under the Act on Business Associations, with the exception of the company's own quota, a quota held in a limited liability company may freely be transferred among the owners (aka "quotaholders") of the company. In the company's articles of association, quotaholders may grant each other a pre-emption right or may restrict or render conditional the quota transfer to third persons by other means. Furthermore, under the Act on Business Associations, the quotaholder(s), the company or a person designated by the quotaholders' meeting has, in this statutory order, a pre-emption right in regard of the quota to be transferred by means of a sale and purchase agreement, provided that this is not precluded or restricted by the articles of association.

If the quotaholder fails to make a declaration on whether or not he wishes to exercise his pre-emption right within fifteen days from receipt of the purchase offer, he shall be considered not to have exercised his pre-emption right. As for the company or the person it has designated, the deadline open for exercising the pre-emption right is thirty days from receipt of the purchase offer.

Based on the Act on Business Associations, each quotaholder may have only one quota. If a quotaholder acquires another quota, his quota increases by the quota acquired.

The Act on Business Associations also provides that one quota may be owned by several persons. Those persons qualify as one quotaholder from the perspective of the

company; their rights, including the conclusion of the articles of association, may be exercised only through their joint representative and they bear a joint and several liability for the quotaholders' obligations.

Opinion of the Supreme Court

The articles of association of a limited liability company may set forth that the provisions of the Act on Business Associations governing the pre-emption right in the event that a quota is transferred to a third party based on a sale and purchase agreement are either not applicable or they are applicable in a restricted manner. Therefore, the pre-emption right may be excluded or restricted in the articles of association, the statutory order set for the exercise of the pre-emption right may be altered and the deadlines set for the exercise of the pre-emption right may be shortened.

Even if the pre-emption right (for the purposes of the Act on Business Associations) does not apply based on the provision of the articles of association, the provisions of the Civil Code regarding pre-emption right still apply.

Based on the Supreme Court's opinion, unless the articles of association provide otherwise, entities with a lower pre-emption right ranking need only be notified of the option to exercise their pre-emption right following that it can be established that the entities with a higher pre-emption right ranking have not exercised their pre-emption rights.

If the articles of association or the Act on Business Associations grant a pre-emption right to some or all quotaholders, the provisions of the articles of association apply to the exercise of the pre-emption right. If the articles of association are silent on this issue, the following rules apply:

- (i) all quotaholders having a pre-emption right may exercise their pre-emption right jointly in a proportion in accordance with their agreement or, in the absence of such agreement, in proportion to their quotas;
- (ii) two or more quotaholders having a pre-emption right may exercise their pre-emption right jointly in accordance with clause (i) above in a way that they qualify as one quotaholder from the perspective of the exercise of the pre-emption right;
- (iii) if two or more quotaholders wish to exercise their pre-emption rights separately, the seller may choose from them.

In the Supreme Court's view, an entity that is not yet registered in the company registry as a quotaholder also has a pre-emption right provided that the seller has become aware - through the quotaholders' list or in another way - of the fact that such entity acquired a quota in the relevant company.

The seller of the quota may not be exempted from the obligation to notify all quotaholders having a pre-emption right simply due to the fact that there are a large number of said quotaholders. However, the seller is not required to notify a quotaholder whose identity or whereabouts is unknown.

The decisions as to whether the company wishes to exercise its pre-emption or appoint a person entitled to exercise pre-emption right fall within the exclusive competence of the quotaholders' meeting.

The Supreme Court also ruled that

- (i) one quotaholder may only have one quota and/or one or more quota portions;
- (ii) although the Act on Business Associations does not provide for any pre-emption right in regard of a quota portion, if a quotaholder wishes to sell only a certain portion of its quota to a third party (i.e. the quotaholder wishes to create a so-called "joint ownership" on its quota), the pre-emption right rules laid down in the Act on Business Associations and the articles of association apply. The acceptance of an adverse standpoint would result in the circumvention of the pre-emption right rules set forth in the Act on Business Associations and the articles of association;
- (iii) if the person owning a quota portion wishes to sell its quota portion to one of the co-owners of the quota of which the quota portion wished to be sold forms part, no pre-emption right exists. If the person owning a quota portion wishes to sell its quota portion to one of the quotaholders (who are not co-owners), the co-owners have a pre-emption right based on the Civil Code. In this case, the quotaholders only have a pre-emption right if they have been given such right in the articles of association. If the person owning a quota portion wishes to sell its quota portion to a third party, the pre-emption right rules set forth in the Civil Code supersede those laid down in the Act on Business Associations. This is because the Act on Business Associations does not contain any specific rules regarding pre-emption right for a quota portion;
- (iv) if a quota is in the joint ownership of two or more persons, such persons may only exercise their pre-emption right jointly and through their joint representative. A person owning a quota portion is not entitled to exercise pre-emption right individually in regard of a separate quota subject to sale. This is because a person owning only a quota portion is not a separate owner of the company, thus, is not allowed to individually exercise quotaholder's rights.

The purpose of this Newsletter is to provide general information regarding the issues set out above. This Newsletter is a publication of Szecskay Attorneys at Law and cannot be regarded as legal advice or legal opinion under any circumstances. With respect to any specific legal queries and more information, please seek legal assistance.

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